



LEGAL BRIEFS

From the Fort Knox Legal Assistance Office

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

FACTS: The Soldiers' and Sailors' Civil Relief Act (SSCRA) was passed by Congress to provide protection for individuals entering or called to active duty in the military service. Reservists and the members of the National Guard are protected under the SSCRA while on active duty. The protection begins with the date of entering active duty and generally terminates within 30 to 90 days after the date of discharge from active duty. The SSCRA also applies to individuals who are entering permanent active duty status.

This legal brief provides questions and answers in areas of concern to reservists and members of the National Guard entering active duty, as well as permanent active duty personnel.

1. JUDICIAL STAY OF CIVIL PROCEEDINGS (50 U.S.C. App. 521)

Q. What is the purpose of a stay of proceedings?

A. To permit delay of civil court proceedings where military service prevents a plaintiff or defendant from asserting or protecting a legal right.

Q. What type of proceeding does the stay apply to?

A. Both plaintiffs and defendants can request stays in civil proceedings only, not criminal or administrative proceedings (except regarding statutes of limitation - 50 U.S.C. App. 525). The SSCRA applies in all federal, state, and territorial CIVIL courts. It does NOT apply in foreign courts.

Q. When can a request for a stay be made?

A. Request for a stay may be made at any stage of the court action or proceeding as long as the request is made during military service or within 60 days thereafter. NOTE: Some courts have determined that a letter invoking the SSCRA constitutes an appearance that waives the right to reopen a subsequent default judgment entered against the servicemember.

Q. What is the maximum duration of a stay of proceedings?

A. Maximum duration of stay is the period of service plus three months after discharge. Following this period, the servicemember must appear in court (50 U.S.C. App. 524).

Q. What is the burden of proof for a stay of proceedings?

A. The servicemember must prove that his military duty has "materially affected" his ability to be present in court. Additionally, it is usually necessary that the servicemember's presence in court be absolutely necessary to preclude irreparable harm. Courts, however, require servicemembers to be diligent in their attempts to appear and will be reluctant to grant long-term stays of proceedings.

2. MAXIMUM RATE OF INTEREST (50 U.S.C. App. 526)

The maximum rate of interest (including service charges) on debts incurred by soldiers prior to entering active duty is 6 percent per annum during the service of the soldier. The soldier must show that the ability to pay has been "materially affected" by military service.

Q. Can a soldier lose this protection after it has been granted?

A. Yes. This protection will end if the creditor convinces the court that the soldier's ability to pay a greater amount of interest is not materially affected by the military service.

Q. What types of obligations and liabilities does the 6% interest cap apply to?

A. It applies to all commercial financial obligations and liabilities, including home mortgages, credit card debts, and automobile loans.

Q. Are there any exceptions to the SSCRA 6% interest cap?

A. Yes. One exception is the Higher Education Act, 20 U.S.C. 1078(d). It states that no provision of any law which limits the interest rate on a loan shall apply to the Government Student Loan (GSL) program. Thus, the SSCRA 6% interest cap does not apply to GSL loans. In addition, it is the Office of the Judge Advocate General's position that the SSCRA 6% interest cap does not apply to non-commercial obligations and liabilities such as a property settlement with a former spouse.

Q. Does the servicemember need to inform the creditor about the SSCRA 6% interest cap?

A. Yes. Even though the 6% interest cap automatically applies to individuals on active duty, entering active duty, or called to active duty; the soldier should inform his creditors he has been called to active duty by enclosing a copy of his orders with a request for the interest rate to be reduced to 6%.

Q. Is a servicemember entitled to a refund of interest paid above 6% for the period of time beginning when he came on active duty and ending when the interest rate was reduced to 6%?

A. This question must be resolved with the individual creditor. The argument exists that the servicemember was entitled to the reduced interest rate from the time he came on active duty.

Q. What happens to the difference between 6% and the servicemember's interest rate?

A. The difference in interest rate must be forgiven, not deferred or accrued. Based on legislative history, the amount of interest above 6% does not accrue during the period of service. The servicemember does not pay the amount accrued upon discharge.

Q. Does the SSCRA 6% interest cap apply to joint obligation?

A. Yes. If family members have joint contractual liability with the servicemember, they receive the 6% interest rate protection. Legislative history indicates that business partners should receive protection, but this is not explicit in the Act. If creditors have any questions, have them contact their National Association of Veterans' Affairs.

3. TERMINATION OF LEASES (50 U.S.C. App. 534)

Q. What criteria must be met for relief?

A. The servicemember need only show (a) The lease was entered into prior to entry into military service; (b) The lease was executed by or on behalf of the servicemember; (c) The leased premises were occupied for dwelling, professional, business, agricultural, or similar purposes by the servicemember or the servicemember's dependents; (d) The servicemember is currently in military service.

NOTE: The servicemember need NOT show material effect.

Q. What is the procedure to terminate the lease?

A. The servicemember must deliver written notice to the landlord at any time after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient.

Q. How is the effective date of termination determined?

A. For month-to-month rentals, the termination becomes effective 30 days after the first date on which the next rental payment is due, subsequent to the date

when the notice of termination is delivered. For example, if the rent is due on the first day of each month, and notice is mailed on 1 August, then the next rental payment is due and payable on 1 September. Thirty days after that date would be 1 October, the effective date of termination. For all other leases, termination becomes effective on the last day of the month following the month in which proper notice is delivered. For example, if the lease requires a yearly rental and proper notice of termination is given on 20 October, the effective date of termination would be 31 November.

Q. What if the rent has been paid in advance?

A. The servicemember is required to pay rent for only those months before the lease is terminated. If rent has been paid in advance, the landlord must prorate and refund the unearned portion. If a security deposit was required, it must be returned to the servicemember upon termination of the lease.

4. EVICTION FROM LEASED HOUSING (50 U.S.C. App. 530).

Q. What criteria must be met for relief?

A. (a) The premises were occupied as a dwelling by the servicemember or a dependent; (b) Military service materially affected the servicemember's or dependent's ability to pay; (c) The rent does not exceed \$1200.00 per month.

Q. What relief is available?

A. (a) Stay of eviction proceedings for up to three months following the servicemember's discharge; (b) "Such other order as may be just;" (c) Criminal sanctions including one year confinement and a \$1,000.00 fine for taking part in an eviction in violation of this section.

NOTE: This protection applies regardless of whether the dwelling was rented before or after entry on active duty.

5. INSTALLMENT CONTRACTS AND MORTGAGE FORECLOSURES (50 U.S.C. App. 530-36)

FACTS: A servicemember who, prior to entry into active duty, entered an installment contract for the purchase of real or personal property, will be protected under the SSCRA if the servicemember's ability to make the payments is "materially affected" by the service. An attempt to renegotiate obligations either with individual creditors or with a group of creditors may be made by the servicemember. A creditor may offer to forgive a debt on condition that certain property be given up to him, offer to reduce the longer period of payment at the same or a higher rate of interest, or may make some other offer to change the existing relationship.

Q. How can a creditor foreclose on or repossess property?

A. The creditor must file a lawsuit. Unless the court determines that the servicemember's ability to make payments was NOT materially affected by his military service, the judge can prevent foreclosure and can scale down the installment payment obligations or defer them until after the servicemember is separated from the military service.

Q. Can the servicemember petition the court to obtain relief?

A. Yes. The court can either defer the obligations or set up a schedule or plan of payment that can be met. The court can order a stay of proceedings during the period of military service and three months afterwards. The court also may determine that the most equitable solution is to permit foreclosure or repossession of the property, but require as a condition of the repossession that the property be appraised and that its value, less the outstanding debt, be paid to the servicemember. This will avoid the common occurrence of a creditor foreclosing and purchasing the property at the foreclosure sale for far less than the property's value.

Q. What is the criteria for relief against foreclosures of mortgages?

A. (a) The relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property; (b) The obligation originated prior to entry onto active duty; (c) The property was owned by the servicemember or family member prior to entry on active duty; (d) The property is still owned by the servicemember or family member at the time relief is sought; (e) Military service materially affects the ability to comply with the terms of obligation, such breach occurring prior to or during the period of military service.

6. TAXES (50 U.S.C. App. 574)

Q. Where is a servicemember's income taxed?

A. Military pay is deemed to have been earned in the state of domicile and, therefore, is taxable only by the state of domicile. This means that when the Army details a soldier to various duty stations around the country, he does not become subject to the state income taxes of those states. The soldier continues to be subject only to the state income tax, if any, of his home state where his domicile continues.

Q. Can a state include the military income of a nondomiciliary servicemember for purposes of determining the nonmilitary spouse's state income tax bracket?

A. SSCRA prohibits state taxation of the military income of a nondomiciliary servicemember.

Q. Is the servicemember's tangible personal property, such as his car, subject to personal property taxes in duty state?

A. No. It is subject to taxation in the state of domicile. However, servicemembers must keep their vehicles

currently licensed and if they do not comply with the licensing requirements of the state of domicile they will be required to license their vehicles in the duty state.

Q. Does the SSCRA affect the taxation of real property?

A. No. Real property is taxed by the laws of the state in which it is located. Similarly, the taxation of the income and property of military dependents is not protected by the Act.

7. LIFE INSURANCE (50 U.S.C. App. 540-547)

Q. May life insurance coverage be precluded if it contains a war clause?

A. Yes. In the event of hostilities or death connected with military activity, life insurance coverage may be precluded if the policy contains a war clause.

Q. How can a soldier know if his commercial life insurance policy contains a war clause?

A. DA policy and AR 210-7 para 4(b) requires commercial life insurance groups selling insurance on a military installation to include the war clause on the front page of the policy. The war clause must be set out in bold print.

Q. Is it ethical to inform soldiers which insurance companies offer policies without the war clause?

A. Yes. It is DA's position that a soldier may be provided a list of insurance companies which do not have war, hostility, or military activity exclusion clauses.

NOTE: Another relief provision in the SSCRA allows a soldier to obtain a government guarantee of premium payments on up to \$10,000 of life insurance owned by him prior to entry on active duty. In effect, the soldier can obtain a moratorium on payment of premiums during the period of his active duty but to do so the soldier must file an application with the Veterans' Administration. The insured service member must repay the unpaid premiums and interest no later than two years after the expiration of the term of military service.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771. Our hours of operation are Monday through Friday, 0800 - 1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall (north of the post office on Knox Street).